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man when the life estate is eliminated in any manner, for such must have been testator's intention.

8. **Wills (§ 554*)—Construction—Acceleration of Remainder.**—A gift to testator's "descendants per stirpes of such as may be then dead without issue surviving" is not substitutionary, but creates contingent remainders in the persons mentioned, and they take as purchasers, and only those living at "the death or remarriage" of the wife, life tenant, answer the description of donees under the provisions of the clause.

Appeal from Circuit Court, Fairfax County.

Suit by Mary B. Compton and others against John S. Barbour and another, as executors of the estate of John F. Rixey, deceased, and others. From a decree dismissing the bill, the complainants appeal. Decree affirmed.

Jos. F. Moore, of Berryville, for appellants.

R. E. Thornton and *John S. Barbour*, both of Fairfax, and *H. Thornton Davies*, of Manassas, for appellees.

LEACHMAN, County Treasurer *v.* BOARD OF SUP'RS OF
PRINCE WILLIAM COUNTY.

March 13, 1919.

[98 S. E. 656.]

1. **Appeal and Error (§ 56*)—Judgments Appealable—Amount in Controversy.**—Where court, on exception to disallowance of claims to an amount upward of \$900, paid by county treasurer, affirmed the disallowance and gave judgment for costs against him, the judgment was appealable, under Code, § 3454, as in effect a final judgment for money to amount of claims disallowed.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 477.]

2. **Trial (§ 370 (3)*)—Submission of Issues to Jury—Bills Allowed by Treasurer.**—A cause in the circuit court on exceptions to the commissioner's report refusing to allow certain items paid by the county treasurer raises an issue presenting a question of law, which should have been decided by the court, and not submitted to the jury.

3. **Trial (§ 370 (2)*)—Ex Parte Matters—Treasurer's Settlements—Right to Jury.**—Upon a county treasurer's exceptions to the report of the commissioner of accounts refusing to allow items paid, authority is not conferred upon the court by Acts 1914, c. 330, or by

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

analogy under Code 1887, § 2698, as amended by Acts 1904, c. 154 (Code 1904, § 2698), for the calling of a jury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 9 et seq.]

4. Appeal and Error (§ 1062 (1)*)—Harmless Error—Submission to Jury.—While it was error, in an ex parte settlement of a county treasurer, taken to the circuit court upon exceptions to the commissioner's report, to submit the issues to a jury, such error was harmless, where the court itself properly passed upon such exceptions.

5. Officers (§ 111*)—Liability—Public Policy.—For reasons of public policy fiscal officers are held to a very strict liability for public funds intrusted to their care, and are required to assume all risk of loss and account for all funds going into their hands.

6. Counties (§ 165*)—Officers—Board of Supervisors—Allowance of Claims—"Legal."—Code 1904, § 851, provides that every warrant to the county treasurer shall be signed by the clerk and countersigned by the acting chairman of the board of supervisors, that no warrant shall be issued except upon recorded vote or resolution of the board, and to be legal a warrant must conform thereto; and the word "legal," as used in reference thereto by sections 859, 860, 863, is equivalent of "lawful."

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Legal.]

7. Counties (§ 168 (5)*)—Officers—Supervisors—Allowance of Claims—Warrants.—The chairman of the board of supervisors is a public officer, and not the agent of the board upon whom the county treasurer could rely as to the validity of warrants he signs, or as to their having been approved by the board.

8. Counties (§ 168 (5)*)—Officers—Treasurer—Power to Pass on Claims.—Although a county treasurer is a mere disbursing officer, without power to question the action of the board of supervisors in ordering warrants drawn on him, yet he is not authorized to pay warrants not passed upon by the board.

9. Counties (§ 168 (5)*)—Treasurer—Liability—Illegal Warrants.—A county treasurer was not authorized, by the fact that warrants were signed by the chairman of the county board of supervisors, in indulging the presumption that they were authorized by the board, and where he did so, and the warrants were illegal, he was liable for the loss sustained.

Error to Circuit Court, Prince William County.

Proceeding by J. P. Leachman, as treasurer of Prince William County, to secure allowance of his accounts. On excep-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tions heard by court and jury, judgment was entered against him for certain claims, and he brings error. Affirmed.

C. E. Nicol, of Alexandria, and *Allen L. Oliver*, of Cape Girardeau, Mo., for plaintiff in error.

H. Thornton Davies, of Manassas, for defendant in error.

VIRGINIA IRON, COAL & COKE CO. *v.* GRAHAM et al.

March 13, 1919.

[98 S. E. 659.]

1. Contracts (§ 309 (1, 2*))—Impossibility of Performance—Destruction of Subject-Matter.—If one makes contract which is in itself possible, he will be liable for a breach, notwithstanding it is beyond his power to perform, but where it is apparent that parties contracted on basis of continued existence of substance to which contract related, a condition is implied that if performance becomes impossible because that substance does not exist, this will excuse performance.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 434 et seq.]

2. Mines and Minerals (§ 70 (3*))—Royalties under Lease—Exhaustion of Ore.—A 40-year mining lease, providing compensation to lessor "for each ton of good merchantable ore mined and shipped * * * not less than 20,000 tons to be shipped each year," held not to contemplate that lessee should be bound when ore was exhausted.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 711.]

3. Cancellation of Instruments (§ 4*)—Grounds—Mistake of Fact.—Relief may be had in equity for the cancellation or rescission of a contract if mistake of fact affects its very substance and is not a mere incident or inducement for entering into it.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 888.]

4. Contracts (§ 93 (5))—Validity—Mistake of Fact.—If certain facts are assumed by both parties as basis of a contract, and it subsequently appears that such facts did not exist, the contract is inoperative.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 861.]

5. Cancellation of Instruments (§ 13*)—Grounds—Defense at Law.—Although a lessee of a mine could have set up in action for royalties or rent failure of consideration due to mistake of fact as to amount of ore, it was under no obligation to wait institution of such an action, but could resort to equity for cancellation of lease, where existence of lease and possibility of having to assume liabil-

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